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7 *(Ret.), Trustee of the PG&E Fire Victim Trust*

8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

10 **In re:**

11 **PG&E CORPORATION**

12 **-and-**

13 **PACIFIC GAS AND ELECTRIC**
14 **COMPANY,**

15 **Debtors.**

- 16 ☐ Affects PG&E Corporation
17 ☐ Affects Pacific Gas and Electric Company
18 ☒ Affects both Debtors

19 **All papers shall be filed in the Lead Case,*
20 *No. 19-30088 (DM)*

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**THE FIRE VICTIM TRUSTEE'S
OBJECTION TO
PRICEWATERHOUSECOOPERS LLP'S
NOTICE OF [PROPOSED] ORDER**

1 On August 9, 2021, PricewaterhouseCoopers LLP (“PwC”) filed a notice of proposed order
2 regarding PwC’s own non-compliance with the Rule 2004 subpoena issued to it in March 2020.
3 Regrettably, PwC’s notice includes numerous statements that are belied by the record. Because
4 PwC’s proposed order relies on those misstatements, the Fire Victim Trustee (the “Trustee”) hereby
5 objects to PwC’s notice and proposed order.

6 First, PwC’s notice wrongly suggests that the Trustee only requested “‘work product’ for the
7 CWSP, PSPS, and EPC CC” engagements for the first time during an exchange on August 9, 2021.
8 Dkt. No. 11041 at 2. This is simply untrue. The Trustee’s request for such documents is contained
9 in the subpoena itself and has been part of the parties’ meet-and-confer discussions throughout the
10 entirety of this discovery dispute. *See, e.g.*, Dkt. No. 6351-2 at 5 & 8 (subpoena’s third document
11 request and relevant defined term calling for production of documents constituting or memorializing
12 “[PwC’s] work for PG&E,” including “any and all reports, analyses, summaries, or descriptions of
13 [PwC’s] work” and “all drafts or partial copies, . . . letters, emails, [and] memoranda” comprising
14 or memorializing the same); Dkt. No. 10915-4 at 3 (requesting compliance with third document
15 request in subpoena and defining such request as seeking “PwC Deliverables,” for convenience).
16 Following the discovery conference on July 16, 2021, and in recognition of the Court’s guidance
17 regarding clarification of the term “deliverables,” the Trustee wrote to PwC and specifically
18 requested the following:

- 19 1. PwC’s contracts with PG&E during the time period 2013 through March 17,
20 2020;
- 21 2. PwC’s deliverables relating to the **Community Wildfire Safety Program**
22 (“CWSP”), meaning PwC’s work product generated in connection with
that engagement, including advice, recommendations, analysis, and/or
reports to PG&E, during the time period 2013 through March 17, 2020;
- 23 3. PwC’s deliverables relating to the **Public Safety Power Shutoff program**
24 (“PSPS”), meaning PwC’s work product generated in connection with that
engagement, including advice, recommendations, analysis, and/or reports
25 to PG&E, during the time period 2013 through March 17, 2020;
- 26 4. PwC’s deliverables relating to the **EPC Cross-Cutting program (“EPC**
27 **CC”)**, meaning PwC’s work product generated in connection with that
engagement, including advice, recommendations, analysis, and/or reports
to PG&E, during the time period 2013 through March 17, 2020; and
28

1 5. PwC's deliverables relating to the **General Rate Case ("GRC")**, meaning
2 PwC's **work product** generated in connection with that engagement,
3 including advice, recommendations, analysis, and/or reports to PG&E,
4 during the time period 2013 through March 17, 2020.

4 Email from S. Kilgore to M. Cave (Jul. 16, 2021 at 4:19 p.m. PDT) at 1 (bold in original) (bold,
5 underlined, italics added).¹ The same requests were later set forth, verbatim, in the Trustee's status
6 report of August 2, 2021, and the first through fourth requests were similarly set forth, verbatim, in
7 the Trustee's proposed order of August 9, 2021. See Email from S. Kilgore to L. Parada (Aug. 2,
8 2021 at 11:18 a.m. PDT) at 1 (setting forth identical requests to those issued to PwC)²; Dkt.
9 No. 11039 at 2-3 (same); Dkt. No. 11039-1 at 3-4 (same). PwC's purported "compromise offer,"
10 which was only extended on August 9, 2021 at 6:08 p.m. PDT, unreasonably narrows the scope of
11 production and provides the Trustee with no assurances that additional documents might be provided
12 in a timely manner. Further, PwC's proposed order would appear to relieve PwC of any obligation
13 to provide a privilege log, as that proposed order calls only for the production of "non-privileged,
14 final deliverables" and a privilege log only to the extent such "above-described documents [*i.e.*,
15 non-privileged, final deliverables]" are withheld on the basis of privilege. Dkt. No. 11041 at 6.

16 Second, PwC's notice falsely asserts that "the Trustee has dropped [a] facially overbroad
17 request to other consultants" for "documents sufficient to identify all of [their respective] contracts
18 with PG&E." Dkt. No. 11041 at 2. There is no basis for such assertion. As discussed at length
19 during the discovery conference on August 5, 2021, the Trustee has been engaged, and is currently
20 engaged, in significant meet-and-confer discussions with other business consultants to PG&E, all
21 of whom are working with the Trustee to reach a mutually agreeable scope of production. PG&E,
22

23 ¹ A true and correct copy of this email is attached for the Court's convenience as **Attachment 1**.

24 ² PwC improperly characterizes the Trustee's status report as having been submitted in violation
25 of the Court's order because such status report was submitted unilaterally. PwC does not and
26 cannot dispute, however, that it failed to respond to any of the Trustee's correspondence between
27 July 22 and August 3, 2021, thus forcing the Trustee to submit a status report solely on behalf of
28 himself in order to comply with the Court's August 2, 2021 deadline. As discussed during the
discovery conference on August 5, 2021, PwC provided no response to the Trustee's discovery
requests until 11:57 p.m. PDT on August 4, 2021, little more than ten hours before the conference
was scheduled to begin.

1 in stark contrast, has refused to work with the Trustee in any meaningful way. *See generally* Dkt.
2 No. 10915 (describing PwC's discovery conduct to date). Given PwC's refusal to date to produce
3 its contracts with PG&E, which are plainly responsive to the Rule 2004 subpoena,³ or even to engage
4 with the Trustee on this issue, the production of documents sufficient to identify PwC's contracts
5 with PG&E (such as a list identifying the same) is a necessary first step to resolving the parties'
6 discovery dispute on this issue.

7 Finally, PwC wrongly contends that the Trustee's request for a privilege log was raised "for
8 the first time in the proposed order." Dkt. No. 11041 at 3. Not so. As with the issues discussed
9 immediately above, the Trustee's request for a privilege log was set out in the Rule 2004 subpoena
10 itself and included throughout the parties' meet-and-confer discussions. *See* Dkt. No. 6351-2 at 4
11 (incorporating Fed. R. Civ. P. 45(e)(2)); Dkt. No. 10915-4 (requesting privilege log); Dkt.
12 No. 10915-6 (same); *see also* Attachment 1 (same). In order to avoid potential disputes regarding
13 the sufficiency of PwC's offered privilege log, the Trustee's proposed order merely enumerates the
14 information necessary to evaluate the basis for any privilege claim on which PwC relies, and
15 requires PwC to provide such information to the Trustee. *See* Fed. R. Civ. P. 45(e)(2)(A)(ii)
16 (requiring privilege assertions to be supported by descriptions of "the nature of the withheld
17 documents . . . in a manner that, without revealing information itself privileged or protected, will
18 enable the parties to assess the claim")⁴; *In re Royce Homes, LP*, 449 B.R. 709, 729 (Bankr. S.D.
19 Tex. 2011) (explaining that proponent of privilege "failed to carry his burden" because he produced
20 a privilege log "riddled with bald assertions of the privilege" and refused to "describe each and
21 every e-mail's subject matter and why each e-mail should be granted protection"); *see also* Dkt.
22 No. 10915-6 at 6 (quoting Fed. R. Civ. P. 45(e)(2)(A)(ii) and *In re Royce Homes, LP* in discussing
23 the Trustee's request for a privilege log).

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26 ³ *See* Dkt. No. 6351-2 at 8 (subpoena request calling for the production of "any and all contracts
27 and/or work agreements between [PwC] and PG&E, for the time period 2013 to the present").

28 ⁴ Contrary to PwC's claim, the same information is required of both parties and non-parties.
Compare Fed. R. Civ. P. 26(b)(5)(a)(ii), *with* Fed. R. Civ. P. 45(e)(2)(A)(ii).

1 For all the foregoing reasons, the Trustee objects to PwC's notice and proposed order, and
2 respectfully requests that the Court enter an order in the form proposed by the Trustee.

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4 DATED: August 10, 2021

GREENBERG GROSS LLP

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6 By: /s/ Sarah Kelly-Kilgore

7 Evan C. Borges

8 Sarah Kelly-Kilgore

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10 *(Ret.), Trustee of the PG&E Fire Victim Trust*
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